

ORIGINAL FILED
OCT - 2 2007
**LOS ANGELES
SUPERIOR COURT**

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**HOME DEPOT U.S.A., Inc., a Delaware
Corporation,**

Defendant.

Case No.: BC376095

**PERMANENT INJUNCTION
AND FINAL JUDGMENT;
ORDER ~~RECEIVED~~**

(Version Revised 9/07)

It appearing to the Court that the Court has jurisdiction over the subject matter and the Parties; that Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA (hereinafter "the People") by and through the EDMUND G. BROWN JR., Attorney General of the State of California, BRETT J. MORRIS, Deputy Attorney General, and ROCKARD J. DELGADILLO, City Attorney of the City of Los Angeles, Patty Bilgin, Supervising City Attorney, STEVE COOLEY, District Attorney of Los Angeles County, STANLEY P. WILLIAMS, Assistant Head Deputy District Attorney, DANIEL J. WRIGHT, Deputy District Attorney, DEAN D. FLIPPO, District Attorney of Monterey County, MATT BOGOSHIAN, Deputy District Attorney, ROD PACHECO, District Attorney of Riverside County, STEPHANIE B. WEISSMAN, Deputy District Attorney, JAMES P. WILLETT, District Attorney of San Joaquin County, DAVID J. IREY, Deputy District Attorney, and DOLORES A. CARR, District Attorney of Santa Clara

County, JOHN FIORETTA, Deputy District Attorney, and Defendant, HOME DEPOT U.S.A., INC., a Delaware Corporation (hereinafter "Home Depot"), by and through its attorneys O'MELVENY & MYERS, JAMES R. ASPERGER, have executed a STIPULATION FOR ENTRY OF FINAL JUDGMENT, attached hereto as Exhibit A, and have executed an Amendment to the Stipulation for Entry of Final Judgment, attached hereto as Exhibit A-1, which recite, among other things the consent of the Parties to the filing and entry of this PERMANENT INJUNCTION AND FINAL JUDGMENT by the Court; and that there is good cause for the entry of the Permanent Injunction and Final Judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. JURISDICTION

The Superior Court of California, County of Los Angeles, has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Permanent Injunction and Final Judgment (the "Final Judgment").

2. STATUTORY PAYMENTS AND MONETARY LIABILITY

2.1 Payment: Home Depot shall pay a total of Nine Million, Nine Hundred Thousand Dollars (\$9,900,000.00), which shall be allocated as follows:

a. Civil Penalties: Seven Million, Two Hundred and Fifty Thousand Dollars (\$7,250,000.00), to be disbursed as set forth in Exhibit B, attached hereto.

b. Costs: One Million, Three Hundred Thousand Dollars (\$1,300,000.00), as partial recovery of costs incurred by the People in connection with the investigation of this matter, to be disbursed as set forth in Exhibit C, attached hereto.

c. Supplemental Environmental Projects: One Million, Three Hundred and Fifty Thousand Dollars (\$1,350,000.00), to be applied to the projects set forth in Exhibit D, attached hereto.

2.2 Additional Environmental Training Programs: Plaintiff acknowledged and confirmed that prior to the entry of this Final Judgment, Home Depot provided the funds to be contributed to the environmental training programs described more fully in Exhibit E, attached hereto.

1 **2.3 Additional Obligations to Implement Environmental Commitments:**
2 Home Depot shall adopt and implement the Additional Environmental Commitments described
3 more fully in Exhibit F, attached hereto.

4 **2.4 Procedure for Payment:** Home Depot shall satisfy its payment
5 obligations to the People under Paragraphs 2.1 and 2.2 as follows:
6 a. The disbursement of all of the payments to be made by Home
7 Depot to the People pursuant to Paragraphs 2.1 and 2.2 of this Final Judgment shall be the
8 responsibility of a Payment Administrator who has been designated by the People. The Payment
9 Administrator is David J. Ireys, Deputy District Attorney for the San Joaquin County District
10 Attorney's Office.

11 b. The payments required of Home Depot pursuant to Paragraphs 2.1
12 and 2.2 shall be made by certified or cashier's checks or wire transfer to the Payment
13 Administrator. All payments made by check shall be delivered to the following address:

14 San Joaquin County District Attorney's Office
15 Attention: David J. Ireys
16 222 E. Weber Avenue, Room 202
 Stockton, CA 95202

17 In the alternative, payments may be made by wire transfer and such transfers
18 shall be electronically transmitted to an account and routing number as directed in writing by the
19 People to Home Depot following the entry of this Final Judgment.

20 c. Home Depot shall deliver to the Payment Administrator the
21 aforementioned payments set forth in Paragraph 2.1 within twenty (20) days of the Court's entry of
22 this Final Judgment. In the alternative, payment may be made by wire transfer and such transfers
23 shall be electronically transmitted to an account and routing number as directed in writing by the
24 People to Home Depot within twenty (20) days following the entry of this Final Judgment. The
25 Payment Administrator shall be responsible for disbursing the settlement funds to the entities
26 identified in Exhibits B, C, D, and E in accordance with the terms of this Final Judgment and
27 applicable Exhibits.

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d. A photocopy of all of the payments made by Home Depot pursuant to Paragraphs 2.1 and 2.2 (or electronic confirmation of the wire transfer) shall be sent, at the same time that they are delivered or transferred for payment, to each of the People's representatives identified in Paragraph 5.

3. PERMANENT INJUNCTION

Subject to Paragraph 11.2 and pursuant to provisions of Health and Safety Code sections 25181 and 25516.2, Business and Professions Code section 17203, and the Court's equitable powers, Home Depot shall undertake the following actions related to: (a) Covered Facilities that have not been permanently closed as of the date of entry of this Final Judgment by the Court; and, (b) any newly constructed facilities that Home Depot shall open after entry of this Final Judgment. This Permanent Injunction shall not apply to: (a) any facility that Home Depot may acquire after entry of this Final Judgment; or, (b) any facility once it has been closed and no hazardous material or hazardous waste remains at the premises. Any violation of the Permanent Injunction required by this Final Judgment shall be considered separate and in addition to any violation of the statutory or regulatory requirements.

3.1 Licensed Hazardous Waste Haulers: Home Depot shall only engage in the transportation of hazardous waste, or transfer custody of hazardous waste for transport to hazardous waste transporters, in compliance with Section 25163 of the California Health and Safety Code.

3.2 Certification of Hazardous Waste Program: Within 30 days of entry of this Final Judgment by the Court, and annually thereafter for the duration of the Permanent Injunction, Home Depot shall submit a certification to the People that an HHM III Program, or an equivalent program to that produced by Settling Defendant on September 18, 2007, to each of the undersigned offices acting on behalf of the People, has been adopted and administered for the duration of the year at each of the Covered Facilities that contain or generate hazardous materials or hazardous waste in the State of California. In addition, Home Depot shall provide an annual certification to the People beginning on the same date as the other certifications required hereunder in 2008, and continuing through the duration of the Permanent Injunction, that Home Depot has reviewed the HHM III or equivalent program and has updated that program to address intervening

1 changes in applicable California laws relating to hazardous waste. As used in this paragraph,
2 “equivalent program” shall mean a program that achieves equivalent compliance with the HWCL
3 in all material respects. For the duration of the Permanent Injunction, at the close of each quarter
4 of each year Home Depot shall provide in accordance with the notice provisions of Paragraph 5 a
5 copy of the most current version of the programs administered pursuant to this paragraph. The
6 copies provided shall be electronically red-lined to specifically identify any additions or deletions
7 made to each program as compared to the last version of that program provided to the People.

8 **3.3 Certification of Document Retention:** Within 30 days of entry of this Final
9 Judgment by the Court, and annually thereafter for the duration of the Permanent Injunction, Home
10 Depot shall submit a certification that, to the best of Home Depot’s knowledge and belief, California
11 governmental notices of violations and inspection reports (collectively “Inspections”) relating to the
12 violations alleged in the Complaint that are received by a Covered Facility or the Store Support
13 Center of Home Depot, and any associated responsive correspondence (“Responses”), have been
14 retained by Home Depot. True and correct copies of such Inspections and Responses, and all
15 attachments thereto, shall be provided on a quarterly basis to the San Joaquin County District
16 Attorney’s Office and to the California Attorney General’s Office.

17 **3.4 Hazardous Waste Training:** Home Depot shall maintain and administer a
18 program to provide training to such employees in California as are required to be trained in
19 hazardous waste management procedures pursuant to California Health and Safety Code section
20 25123.3(h) and any other regulations applicable to the Covered Facilities, and shall maintain
21 documentation of such training as provided under that program for the duration of this Permanent
22 Injunction. Home Depot contends that as of the date of the entry of this Final Judgment, the Covered
23 Facilities qualify as small quantity generators or conditionally exempt generators and that at the time
24 of the entry of this Final Judgment training for large quantity generators is not required for the
25 Covered Facilities.

26 **3.5 Hazardous Materials Training:** Home Depot shall maintain and administer
27 a program to provide training to such employees in California as are required to be trained in
28 hazardous materials handling procedures pursuant to California Health and Safety Code section

1 25504 and all other training requirements pursuant to Chapter 6.95 and its implementing regulations
2 applicable at the Covered Facilities, and shall maintain documentation of such training as provided
3 under that program for the duration of this Permanent Injunction.

4 **3.6 Hazardous Waste Transport Containers:** Home Depot shall maintain and
5 administer a corporate policy that requires hazardous waste transporters that transport hazardous
6 waste from Covered Facilities for off-site disposal to use Department of Transportation-approved
7 containers, in accordance with Title 22 of the California Code of Regulations, section 66262.30.

8 **3.7 Fire Code Program:**

9 a. Except as provided in subdivision (c) of this Paragraph, prior to the
10 execution of the Stipulation to the Entry of Final Judgment, Home Depot shall have provided to the
11 People a proposed Fire Code Program that has been developed to comply with applicable Local,
12 State, and Uniform fire codes (hereinafter "the fire codes"). Home Depot shall adopt and begin to
13 administer this Fire Code Program at all Covered Facilities that are "Home Depot" branded retail
14 stores prior to the entry of this Final Judgment by the Court. At all Covered Facilities that are not
15 "Home Depot" branded retail stores, Home Depot shall have delivered to each facility a
16 communication that requires each facility to comply with the fire codes prior to the entry of this Final
17 Judgment. Home Depot shall develop an enhanced version of the existing fire code procedures (an
18 "interim Fire Code Program") and adopt and begin to administer the interim Fire Code Program at
19 all Covered Facilities that are not "Home Depot" branded retail stores prior to entry of the Final
20 Judgment by the Court. Home Depot then shall promptly review and evaluate compliance with the
21 fire codes at all Covered Facilities that are not "Home Depot" branded retail stores to identify
22 whether any modifications to the interim Fire Code Program may be necessary. Home Depot shall
23 adopt and begin to administer the revised Fire Code Program at all Covered Facilities that are not
24 "Home Depot" branded retail stores by January 15, 2008. As used in this paragraph, "equivalent
25 program" shall mean a program that achieves equivalent compliance with the fire codes in all
26 material respects.

27 b. Home Depot shall initiate the process of applying for any variances
28 or opinions from the State Fire Marshal relating to the issues described in Exhibit H, attached hereto,

1 within 60 days after entry of this Final Judgment and thereafter promptly exhaust all administrative
2 and/or legal remedies relating to such variances.

3 c. The People shall not pursue any violations of this Permanent
4 Injunction against Home Depot based on any alleged violation or penalty relating to the issues # 3,
5 7, and 8 identified in Exhibit H, attached hereto, through and until October 15, 2007, and issues #
6 1, 2, 4, 5, and 6 identified in Exhibit H through and until November 30, 2007. However, this
7 exclusion shall not apply to any release or incident involving an imminent risk of death, serious
8 bodily injury, explosion, or fire. Home Depot may provide notice of this Final Judgment to any
9 Certified Unified Program Agency ("CUPA") and local fire department in California at the time of
10 execution of the Stipulation to the Entry of Final Judgment by the Parties, and may request that any
11 agency provide comments or objections. If a local fire department pursues any enforcement action
12 relating to violations of the fire codes alleged to have occurred prior to October 15, 2007 and
13 November 30, 2007, as applicable, Home Depot may notify the relevant agency of this Stipulation
14 to the Entry of Final Judgment.

15 d. By January 15, 2008, Home Depot shall submit a certification to the
16 People that Home Depot has adopted and is administering a Fire Code Program in the State of
17 California at all Covered Facilities that are subject to the fire codes. For the duration of this
18 Permanent Injunction, Home Depot also shall annually submit a certification to the People that
19 Home Depot administered for the duration of the previous year the Fire Code Program in the State
20 of California at all Covered Facilities that are subject to the fire codes. As used in this paragraph,
21 "Fire Code Program" shall mean a program that achieves equivalent compliance with the fire codes
22 in all material respects. For the duration of the Permanent Injunction, at the close of each quarter
23 of each year Home Depot shall provide in accordance with the notice provisions of Paragraph 5 a
24 copy of the most current version of the programs administered pursuant to this paragraph. The
25 copies provided shall be electronically red-lined to specifically identify any additions or deletions
26 made to each program as compared to the last version of that program provided to the People.

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1 **4. MATTERS COVERED BY THIS FINAL JUDGMENT**

2 **4.1** This Final Judgment is a final and binding resolution and settlement of all
3 Claims that have been alleged, or Claims that could have been asserted within the scope of the
4 allegations set forth, in the Complaint in this matter up until execution of the Stipulation for Entry
5 of Final Judgment by the Parties, according to statute, regulation, or ordinance by or through the
6 People of the State of California ("Covered Matters"), against Home Depot and its subsidiaries,
7 affiliates and corporate parents, and each of their affiliates and parents, Covered Facilities,
8 successors, heirs, assigns, and their respective officers, directors, partners, employees, agents,
9 representatives, property owners, and facility operators ("Entities Covered by Settlement"). The
10 People further covenant not to sue the Entities Covered by Settlement for any Covered Matter.
11 Except as expressly provided herein, each Party shall bear its own attorneys' fees and costs.

12 In the event that litigation is filed by an entity which is not a party to this
13 action against one of the Entities Covered by Settlement based upon Claims alleged in the
14 Complaint, or which could have been asserted based on the Claims alleged in the Complaint, Home
15 Depot shall notify the People within thirty (30) days of service of such litigation on Home Depot.
16 If the People determine that the subsequent litigation is barred by the principles in this paragraph,
17 the People will not oppose Home Depot in arguing that the subsequent litigation is barred by the
18 principle of *res judicata*. No language in this paragraph nor any language in paragraph 3 will
19 preclude Home Depot from asserting in any subsequent litigation any and all legal and equitable
20 defenses regarding compliance with any provision in this Final Judgment or the laws or regulations
21 cited in this Final Judgment or cited in the Complaint, including, but not limited to, *res judicata*.

22 **4.2** The provisions of Paragraph 4.1 are effective as of the date of the entry of this
23 Final Judgment but the continuing effect of such provisions is expressly conditioned on Home
24 Depot's full payment of the civil penalty, costs and other commitment of payments specified in
25 Paragraphs 2.1, 2.2, and 2.3 of this Final Judgment.

26 **4.3** Paragraphs 4.1 and 4.2 have no effect on the ability of the People to enforce
27 the terms of this Final Judgment, or to pursue or file a separate or additional action for any
28 subsequent violation of statutory or regulatory requirements. This Court retains exclusive

1 jurisdiction to address any future claims for injunctive relief, penalty assessment or other relief for
2 the Covered Facilities against Home Depot arising from or related to any alleged or actual violations
3 of this Final Judgment.

4 **4.4** Any violations of law, statute, regulation or ordinance, if any, by Home Depot
5 which are not based on Claims alleged in the Complaint, or are not addressed as a Covered Matter
6 in this Final Judgment, or which occur or exist after this Final Judgment is entered, are not resolved,
7 settled or covered by this Final Judgment.

8 **4.5** Home Depot shall not sue or pursue any civil or administrative claims against
9 the People or agencies of the State of California, or any counties of the State of California, or any
10 Fire department or agency, or any Certified Unified Program Agency, Participating Agency or
11 Unified Program Agency as those terms are defined pursuant to California Health and Safety Code,
12 section 25281, subdivisions (d)(1), (2) and (3) (collectively "Agencies"), or their officers, employees,
13 representatives, agents or attorneys, arising out of or related to any matter expressly addressed by this
14 Final Judgment; provided, however, that if any Agencies initiate claims against Home Depot, Home
15 Depot reserves any and all rights to pursue any and all rights, claims, demands and defenses against
16 such Agencies.

17 **4.6** Notwithstanding any other provision of this Final Judgment, any claims or
18 causes of action arising out of past or future releases, spills, leaks, discharges or disposal of
19 hazardous wastes or hazardous substances caused or contributed to by Home Depot that may have
20 occurred or may occur at a location that is not a Covered Facility for:

21 a. performance of cleanup, corrective action or response action;
22 b. criminal penalties, civil penalties, damages, injunctive relief; or,
23 c. recovery of response costs,
24 are not resolved by this Final Judgment, and such claims or causes of action, if any, are reserved by
25 the People of the State of California; provided, however, that this exclusion does not apply to any
26 matter asserted against the Home Depot arising out of or relating to the handling, disposal and/or
27 transportation of hazardous materials and/or waste by EI, Slate, the 3E Company, Estes Trucking
28 Company ("Estes"), Exel, and any subsidiary, affiliate, or agent of these foregoing entities. The

1 Parties have stipulated that nothing in this Paragraph 4.6 is intended to restrict or limit the scope of
2 the release for Covered Facilities as set forth in Paragraph 4.1.

3 4.7 Except as provided by this Final Judgment, the Parties reserve the right to
4 pursue any claims not related to Covered Matters and any defense to such claims ("Reserved
5 Claims").

6 4.8 In any subsequent action that may be brought by the People to enforce any
7 Reserved Claims or claims otherwise excluded from this Final Judgment, Home Depot will not
8 assert, plead or raise against the People in any fashion any defense or avoidance claiming that such
9 failure to bring such claims as part of this action constitutes claim-splitting, laches or any other lack
10 of timeliness. This Paragraph does not affect any statute of limitations, if any, which may be
11 applicable to any Reserved Claims or claims otherwise excluded from this Final Judgment.

12 4.9 Any event that is beyond the control of Home Depot and that prevents Home
13 Depot from timely performing any obligation under Paragraph 3 of this Final Judgment, despite
14 Home Depot's best efforts to fulfill the obligation, is a "force majeure" event. The requirement that
15 Home Depot exercise "best efforts to fulfill the obligation" includes the requirement that Home
16 Depot use Home Depot's best efforts to anticipate any potential force majeure event and use best
17 efforts to address the effects of any potential force majeure event (1) as it is occurring, and (2)
18 following the force majeure event, such that the delay is minimized to the greatest extent possible.
19 "Force majeure" does not include Home Depot's financial inability to fund or complete the
20 obligation.

21 **5. NOTICE**

22 All submissions and notices required by this Final Judgment shall be sent to:

23 Plaintiff:

24 Brett J. Morris, Esq.
25 Deputy Attorney General
26 Office of the Attorney General
27 1515 Clay Street, 20th Floor
28 P.O. Box 70550
 Oakland, CA 94162-0550
 Brett.Morris@doj.ca.gov

 and to:

David J. Irej, Esq.
Supervising Deputy District Attorney
San Joaquin County
San Joaquin County Courthouse
222 East Weber Avenue, Room 202
Stockton, CA 95202
david.irej@sjcda.org

Home Depot:

Celia J. Peressini, Esq.
Senior Corporate Counsel
The Home Depot U.S.A., Inc.
Store Support Center
2455 Paces Ferry Road, Bldg. C-20
Atlanta, GA 30339
Celia_Peressini@homedepot.com

and to: Debra S. Belaga, Esq.
O'Melveny & Myers LLP
275 Battery Street
San Francisco, CA 94111
dbelaga@omm.com

Any Party may change the contact person or the address for purpose of notices to that Party by specifying a new contact person or address in a notice delivered in writing to the person to whom notice shall be provided under this Paragraph. All notices and other communications required or permitted under this Final Judgment that are addressed as provided in this Paragraph are effective (i) upon delivery if delivered personally or by overnight mail; (ii) five (5) days following deposit in the United States mail, postage prepaid, if delivered by mail; or, (iii) the day that electronic mail is sent if sent before 5 p.m. to the electronic mail addresses of the designated recipients for notice concurrent with sending the notice by overnight mail.

6. NECESSITY FOR WRITTEN APPROVALS

All approvals and decisions of the People regarding any matter requiring approval or decision of the People under the terms of this Final Judgment shall be communicated in writing to Home Depot. No informal oral advice, guidance, suggestions, or comments by employees or officials of the People regarding submissions or notices shall be construed to relieve Home Depot of its obligations under this Final Judgment. All approvals and decisions of Home Depot regarding any matter requiring approval or decision of Home Depot which are required to be communicated to the People under the terms of this Final Judgment shall be communicated in writing to the People.

1 **7. EFFECT OF JUDGMENT**

2 Except as expressly provided in this Final Judgment, nothing in this Final Judgment is
3 intended nor shall it be construed to preclude the People or any state agency, department, board or
4 entity, or any county, or any Certified Unified Program Agency, Participating Agency, Unified
5 Program Agency or any other local agency from exercising its authority under any law, statute, or
6 regulation at the Covered Facilities or any other facility addressed or identified in this Final
7 Judgment. Except as expressly provided in this Final Judgment, Home Depot retains all of its
8 defenses to the exercise of the authority by any of the aforementioned agencies or entities.

9 **8. NO WAIVER OF RIGHT TO ENFORCE**

10 The failure of the People to enforce any provision of this Final Judgment shall neither be
11 deemed a waiver of such provision nor in any way affect the validity of this Final Judgment. The
12 failure of the People to enforce any such provision shall not preclude it from later enforcing the same
13 or any other provision of this Final Judgment. No oral advice, guidance, suggestions, or comments
14 by employees or officials of any Party regarding matters covered in this Final Judgment shall be
15 construed to relieve any Party of its obligations required by this Final Judgment.

16 **9. REGULATORY CHANGES**

17 Nothing in this Final Judgment shall excuse Home Depot from meeting any more stringent
18 requirements which may be imposed hereafter by changes in applicable and legally binding
19 legislation or regulations.

20 **10. APPLICATION OF FINAL JUDGMENT**

21 This Final Judgment shall apply to and be binding upon Plaintiff, Home Depot, and the
22 successors or assigns of each of them; provided, however, that Paragraph 3 shall not apply to a
23 Covered Facility that is sold or otherwise transferred to a person or entity that is not associated with
24 Home Depot.

25 **11. CONTINUING JURISDICTION**

26 **11.1** The Court shall retain continuing jurisdiction to enforce the terms of this Final
27 Judgment and to address any other matters arising out of or regarding this Final Judgment. The
28 People may move this Court to enjoin Home Depot from any violation of any provision of this Final

1 Judgment. The Parties shall meet and confer prior to the filing of any motion relating to this Final
2 Judgment, any dispute regarding Home Depot's compliance with any requirement of the Permanent
3 Injunction, or any dispute regarding Home Depot's administration of the HHM III or Fire Code
4 Programs, and the Parties shall negotiate in good faith in an effort to resolve any dispute without
5 judicial intervention. If the Parties are unable to resolve a dispute during meet and confer
6 discussions, either Party may move this Court seeking a resolution of that dispute by the Court. Any
7 Party may invite any interested third party state or local governmental entity or agency to participate
8 in any meet and confer discussion, and with the Court's consent, to participate in any court
9 proceeding under this paragraph. Home Depot reserves its right to set forth any defenses to alleged
10 violations, and the People reserves its rights to respond to any alleged defenses, before the Court.

11 **11.2** At any time fifty-eight (58) months after the date of entry of this Final
12 Judgment by the Court, any Party may provide notice to the Court (which shall be served on all
13 Parties) that the Permanent Injunction provisions of Paragraph 6 of this Final Judgment should
14 expire and have no further force or effect ("Notice of Termination"). The Permanent Injunction
15 provisions of Paragraph 3 will be of no further force or effect sixty (60) days thereafter, unless the
16 People file a motion contesting the expiration of the Permanent Injunction provisions of Paragraph
17 3 within forty (40) days of receipt of the Notice of Termination. With the Court's consent, this
18 motion filed by the People shall be set for hearing no later than sixty months (60) months after entry
19 of this Final Judgment by the Court. In any event that such a motion is filed, none of the contested
20 injunctive provisions of Paragraph 3 will terminate pending the Court's ruling on the motion. The
21 People reserves its rights to contest termination exclusively on the grounds that Home Depot has not
22 substantially complied in material respects with the injunctive provisions of Paragraph 3 or has not
23 been reasonably diligent in administering a HHM III Program or a Fire Code Program, and to offer
24 any evidence relevant to such motion. Home Depot reserves its rights to respond on any ground
25 raised in this motion and to offer any evidence relevant to such contesting motion filed by the
26 People. The provisions of the Permanent Injunction in Paragraph 3 will expire and be of no further
27 force or effect unless the Court (upon consideration of the Parties' pleadings and arguments, if any)
28 determines that the expiration of the provisions would not be in the interest of justice, because the

1 Home Depot has not substantially complied in material respects with the injunctive provisions of
2 Paragraph 3 or has not been reasonably diligent in administering a HHM III Program or a Fire Code
3 Program. The termination of any of the Permanent Injunction provisions of Paragraph 3 shall have
4 no effect on Home Depot's obligation to comply with requirements imposed by statute, regulation,
5 ordinance, or law.

6 **12. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

7 On reasonable notice and subject to all of the defenses Home Depot would have to requests
8 for documents made by subpoena or other formal legal process or discovery employed by the People,
9 the following duly authorized representative of the undersigned offices shall be permitted to inspect
10 and copy such records and documents in the possession of Home Depot as may be reasonably
11 necessary to determine whether Home Depot is in compliance with the terms of this Final Judgment:
12 David J. Irey of the San Joaquin County District Attorney's Office, and Brett J. Morris of the
13 California Attorney General's Office. Nothing in this paragraph is intended to require access to or
14 production of any documents which are protected from production by the attorney-client privilege,
15 attorney work product doctrine, or any other applicable privileges, defenses, exemptions, or
16 immunities afforded to Home Depot under law. Home Depot shall retain for a minimum of three
17 (3) years the following documents, regardless of whether Home Depot or a contractor prepares the
18 document: manifests, shipping documents, inspections forms, sweep logs, and records of attendance
19 pertaining to training, as required by the procedures of HHM III. However, the Parties agree that
20 Home Depot may not be deemed in violation of this Paragraph 12 for failure to maintain such
21 records unless Home Depot fails to exercise reasonable diligence in administering this record
22 retention requirement. Except as described in this paragraph and in Paragraph 3, nothing in this
23 paragraph is intended to require Home Depot to keep any records beyond the Home Depot's normal
24 records retention requirements, including but not limited to policies regarding backup tapes for
25 electronic documents.

26 **13. CERTIFICATION**

27 Whenever this Final Judgment requires the certification by the Home Depot, such
28 certification shall be provided by a Home Depot representative at a managerial level in charge of

1 environmental compliance matters, or by an officer of the corporation. Each certification shall read
2 as follows:

3 To the best of my knowledge, based on information and belief and after reasonable
4 investigation, I certify that the information contained in or accompanying this
5 submission is true, accurate, and complete. I am aware that there are civil and
6 criminal penalties for submitting false information.

6 **14. ENFORCEMENT OF JUDGMENT**

7 In the event that a Party brings an action to enforce any of the terms of this Final Judgment,
8 the prevailing Party shall be entitled to its reasonable costs, including attorney's fees and costs,
9 including any costs for expert witnesses or other costs.

10 **15. PAYMENT OF LITIGATION EXPENSES AND FEES**

11 Home Depot shall pay its own attorney's fees, expert witness fees and costs, and all other
12 costs of litigation and investigation incurred to date.

13 **16. COOPERATION BY HOME DEPOT**

14 Home Depot shall, at the People's reasonable request and upon reasonable notice, provide
15 documents in Home Depot's possession or control to the People for use as evidence in potential legal
16 actions against EI, Slate, the 3E Company, Estes, Exel, and any subsidiary, affiliate, or agent of these
17 foregoing entities; provided, however, that this obligation shall terminate no later than two years
18 after the date of entry of this Final Judgment and shall not require Home Depot to alter its normal
19 retention policies (including but not limited to policies regarding backup tapes for electronic
20 documents). Nothing in this paragraph is intended to require access to or production of any
21 documents which are protected from disclosure by the attorney-client privilege, attorney work
22 product doctrine, or any other applicable privileges, defenses, exemptions, or immunities afforded
23 to Home Depot under law, nor does it waive any of the objections or defenses to which Home Depot
24 would be entitled in responding to requests for documents made by subpoena or other formal legal
25 process or discovery.

26 **17. INCORPORATION OF EXHIBITS**

27 Each of the Exhibits is incorporated herein by reference.

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18. MODIFICATION OF FINAL JUDGMENT

This Final Judgment may be modified only upon written consent by the Parties hereto and the approval of the Court as provided for by law.

IT IS SO ORDERED.

1 / 1
Dated: October 2, 2007

Original signed by William F. Highberger

JUDGE OF THE SUPERIOR COURT
LOS ANGELES COUNTY SUPERIOR COURT

Exhibit A

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 TOM GREENE
Chief Assistant Attorney General
3 THEODORA P. BERGER
Senior Assistant Attorney General
4 KEN ALEX
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[Exempt from fees pursuant to
Government Code Section 6103]

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9 Attorneys for Plaintiff,
People of the State of California

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 **PEOPLE OF THE STATE OF CALIFORNIA,**

15 **Plaintiff,**

16 **v.**

17 **HOME DEPOT U.S.A., Inc., a Delaware**
18 **Corporation, and DOES 1 through 99,**

19 **Defendants.**

Case No.: _____

**STIPULATION FOR ENTRY
OF FINAL JUDGMENT
(Section 664.6, C.C.P.)**

21 WHEREAS, the PEOPLE OF THE STATE OF CALIFORNIA (hereinafter "the People")
22 have investigated compliance by Home Depot U.S.A., Inc. (hereinafter "Settling Defendant" or
23 "Home Depot") with: (a) Chapters 6.5 and 6.95 of Division 20 of the California Health and
24 Safety Code; (b) Section 17200 *et seq.* of the Business and Professions Code; (c) California
25 Labor Code Division 5, Parts 1, 6, 7 and 11; (d) California Vehicle Code Division 11, Chapter
26 12; Division 12, Chapter 5; Division 13, Chapter 5; and Divisions 14.1, 14.7 and 14.8; and (e)
27 associated implementing regulations pertaining to each of the foregoing; all relating to handling,
28 disposal, spill, release, reporting, transportation, labeling, marking, cleanup and any other

1 requirements relating to, arising out of or involving hazardous waste and/or hazardous materials.
2 In addition, the People have investigated compliance with Local, State and Uniform Fire Codes.

3 WHEREAS, Home Depot has cooperated with the People's investigation and voluntarily
4 produced documents and provided extensive information to the People. Since at least July 2005,
5 Home Depot has dedicated significant additional resources towards environmental compliance
6 and has further enhanced its hazardous waste and hazardous materials compliance programs.
7 Home Depot contends that its Handling Hazardous Materials program (hereinafter "HHM III")
8 has been designed to be a state-of-the-art program and includes policies and procedures that in
9 some cases are more stringent than applicable law.

10 WHEREAS, the People have engaged in settlement negotiations with the Settling
11 Defendant prior to the initiation of litigation. In these negotiations, the People were represented
12 by the Attorney General of the State of California, the City Attorney of Los Angeles, and the
13 District Attorneys for the Counties of Los Angeles, Monterey, Riverside, San Joaquin, and Santa
14 Clara. These offices were supported by the investigational efforts of numerous prosecutorial
15 offices and local agencies throughout the State of California.

16 WHEREAS, the People and the Settling Defendant (hereinafter collectively referred to as
17 "the Parties" or individually as "Party") have agreed to settle the matters under investigation and
18 the facts, causes of action, violations, and claims alleged in the Complaint filed in this matter
19 (collectively "Claims"), without litigation and by lodging this proposed STIPULATION FOR
20 ENTRY OF FINAL JUDGMENT ("Stipulation") and a proposed PERMANENT INJUNCTION
21 AND FINAL JUDGMENT ("Final Judgment") simultaneously with the Complaint. The People
22 believe that the resolution of the Claims as set forth in this Stipulation and the proposed Final
23 Judgment is fair and reasonable and fulfills the People's enforcement objectives, that no further
24 action is warranted concerning the Claims except as provided pursuant to the Final Judgment,
25 and that the proposed Final Judgment is in the best interest of the general public.

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1 **1. INTRODUCTION**

2 In this action, the People filed a civil COMPLAINT FOR PERMANENT INJUNCTION,
3 CIVIL PENALTIES AND OTHER EQUITABLE RELIEF ("Complaint") in the Los Angeles
4 Superior Court against Settling Defendant. The Parties settle this action on the terms set forth in
5 this Stipulation and request that this Court enter the proposed Final Judgment incorporating the
6 terms of this Stipulation.

7 **2. COMPLAINT**

8 The Complaint in this action alleges that the Settling Defendant engaged in conduct that
9 violated provisions of: (a) Chapters 6.5 and 6.95 of Division 20 of the California Health and
10 Safety Code; (b) Section 17200 *et seq.* of the California Business and Professions Code; (c)
11 California Labor Code Division 5, Parts 1, 6, 7 and 11; (d) California Vehicle Code Division 11,
12 Chapter 12; Division 12, Chapter 5; Division 13, Chapter 5; and Divisions 14.1, 14.7 and 14.8;
13 and, (e) associated implementing regulations pertaining to each of the foregoing; all relating to
14 handling, disposal, spill, release, reporting, transportation, labeling, marking, cleanup and any
15 other requirements relating to, arising out of or involving hazardous waste and/or hazardous
16 materials. In addition, the Complaint alleges violation of Local, State and Uniform Fire Codes.
17 A true and correct copy of the Complaint is attached as Attachment "A" to this Stipulation. The
18 facilities that are addressed by this Stipulation and the Final Judgment are any and all facilities
19 that are or were owned, operated or acquired by Home Depot in the State of California as of the
20 date that this Stipulation is executed by all Parties, including but not limited to open, closed and
21 acquired facilities (hereinafter "Covered Facilities"). The specific list of Covered Facilities
22 attached to the Complaint shall not be to the exclusion of other facilities that may have been
23 inadvertently omitted from the list, where the Parties agree in writing that an omitted facility
24 should be included. As to any facilities that have been omitted, Settling Defendant shall provide
25 the following to the People on a quarterly basis: (a) written notice of such additional facilities
26 after the omission comes to the attention of the Home Depot's Store Support Center; and (b) to
27 the best of Defendant's knowledge and belief, copies of any notices of violation and/or
28 governmental inspection reports applicable to such facilities that have been received by that

1 facility since January 1, 2003. If, after the People have had sufficient time in which to review the
2 alleged reason for the omission, and after Home Depot has established to the satisfaction of the
3 People that the omission was inadvertent, the Parties shall agree in writing that the additional
4 facility be included in the Final Judgment.

5 **3. JURISDICTION**

6 For purposes of this Stipulation and the Final Judgment only, the People and Settling
7 Defendant agree that the Superior Court of California, County of Los Angeles, has subject matter
8 jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to the
9 Stipulation and the Final Judgment.

10 **4. SETTLEMENT OF DISPUTED CLAIMS**

11 This Stipulation for Entry of Final Judgment is neither an admission nor a denial by
12 Settling Defendant regarding any issue of law or fact in the above-captioned matter or any
13 violation of any law. The Parties enter into this Stipulation pursuant to a compromise and
14 settlement of disputed claims, as set forth in the Complaint, for the purpose of furthering the
15 public interest. Settling Defendant waives its right to a hearing on any matter covered by the
16 Complaint prior to the entry of the Final Judgment. The Parties agree that this Stipulation is not
17 admissible in any proceeding involving non-parties to the Final Judgment. Settling Defendant
18 reserves the right, for purposes of non-party proceedings, to deny the issues of law and fact in the
19 Final Judgment and exhibits hereto.

20 **5. PAYMENTS**

21 **5.1 Payment:** Settling Defendant shall pay a total of Nine Million, Nine
22 Hundred Thousand Dollars (\$9,900,000.00), which shall be allocated as follows:

23 a. Civil Penalties: Seven Million, Two Hundred and Fifty Thousand
24 Dollars (\$7,250,000.00), to be disbursed as set forth in Exhibit B attached to the Final Judgment.

25 b. Costs: One Million, Three Hundred Thousand Dollars
26 (\$1,300,000.00), as partial recovery of costs incurred by the People in connection with the
27 investigation of this matter, to be disbursed as set forth in Exhibit C attached to the Final
28 Judgment.

1 c. Supplemental Environmental Projects: One Million, Three
2 Hundred and Fifty Thousand Dollars (\$1,350,000.00), to be applied to the projects as set forth in
3 Exhibit D attached to the Final Judgment.

4 5.2 **Additional Environmental Training Programs:** Plaintiff acknowledges
5 and confirms that prior to the entry of the Stipulation in this matter, Settling Defendant provided
6 the funds to be contributed to the environmental training programs described more fully in
7 Exhibit E attached to the Final Judgment. In the event that the Court does not enter the proposed
8 Final Judgment, these funds shall be returned to Settling Defendant, with any interest accrued.

9 5.3 **Additional Obligations to Implement Environmental Commitments:**
10 Settling Defendant shall adopt and implement the Additional Environmental Commitments
11 described more fully in Exhibit F attached to the Final Judgment.

12 5.4 **Procedure for Payment:** Settling Defendant shall satisfy its payment
13 obligations to the People under Paragraphs 5.1 and 5.2 as follows:

14 a. The disbursement of all of the payments to be made by Settling
15 Defendant to the People pursuant to Paragraphs 5.1 and 5.2 of this Stipulation and the Final
16 Judgment shall be the responsibility of a Payment Administrator who has been designated by the
17 People. The Payment Administrator is David J. Irej, Deputy District Attorney for the San
18 Joaquin County District Attorney's Office.

19 b. The payments required of the Settling Defendant pursuant to
20 Paragraphs 5.1 and 5.2 shall be made by certified or cashier's checks or wire transfer to the
21 Payment Administrator. All payments made by check shall be delivered to the following
22 address:

23 San Joaquin County District Attorney's Office
24 Attention: David J. Irej
25 222 E. Weber Avenue, Room 202
26 Stockton, CA 95202

26 In the alternative, payments may be made by wire transfer and such transfers
27 shall be electronically transmitted to an account and routing number as directed in writing by the
28 People to Settling Defendant following the entry of the Final Judgment.

1 c. Settling Defendant shall deliver to the Payment Administrator the
2 aforementioned payments set forth in Paragraph 5.1 within twenty (20) days of the Court's entry of
3 the Final Judgment. In the alternative, payment may be made by wire transfer and such transfers
4 shall be electronically transmitted to an account and routing number as directed in writing by the
5 People to Settling Defendant within twenty (20) days following the entry of the Final Judgment. The
6 Payment Administrator shall be responsible for disbursing the settlement funds to the entities
7 identified in Exhibits B, C, D, and E in accordance with the terms of the Final Judgment and
8 applicable Exhibits.

9 d. A photocopy of all of the payments made by Settling Defendant
10 pursuant to Paragraphs 5.1 and 5.2 (or electronic confirmation of the wire transfer) shall be sent, at
11 the same time that they are delivered or transferred for payment, to each of the People's
12 representatives identified in Paragraph 8.

13 **6. PERMANENT INJUNCTION**

14 Subject to Paragraph 16.2 of the Final Judgment and pursuant to provisions of Health and
15 Safety Code sections 25181 and 25516.2, Business and Professions Code section 17203, and the
16 Court's equitable powers, Settling Defendant shall undertake the following actions related to: (a)
17 Covered Facilities that have not been permanently closed as of the date of entry of the Final
18 Judgment by the Court; and, (b) any newly constructed facilities that Settling Defendant shall open
19 after entry of the Final Judgment. The Permanent Injunction shall not apply to: (a) any facility that
20 Settling Defendant may acquire after entry of the Final Judgment; or, (b) any facility once it has been
21 closed and no hazardous material or hazardous waste remains at the premises. Any violation of the
22 Permanent Injunction required by the Final Judgment shall be considered separate and in addition
23 to any violation of the statutory or regulatory requirements.

24 **6.1 Licensed Hazardous Waste Haulers:** Settling Defendant shall only engage
25 in the transportation of hazardous waste, or transfer custody of hazardous waste for transport to
26 hazardous waste transporters, in compliance with Section 25163 of the California Health and Safety
27 Code.

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1 **6.2 Certification of Hazardous Waste Program:** Within 30 days of entry of
2 the Final Judgment by the Court, and annually thereafter for the duration of the Permanent
3 Injunction, Settling Defendant shall submit a certification to the People that an HHM III Program,
4 or an equivalent program to that attached as Exhibit G to the Final Judgment (filed under seal), has
5 been adopted and administered for the duration of the year at each of the Covered Facilities that
6 contain or generate hazardous materials or hazardous waste in the State of California. In addition,
7 Settling Defendant shall provide an annual certification to the People beginning on the same date as
8 the other certifications required hereunder in 2008, and continuing through the duration of the
9 Permanent Injunction, that Settling Defendant has reviewed the HHM III or equivalent program and
10 has updated that program to address intervening changes in applicable California laws relating to
11 hazardous waste. As used in this paragraph, "equivalent program" shall mean a program that
12 achieves equivalent compliance with the HWCL in all material respects. For the duration of the
13 Permanent Injunction, at the close of each quarter of each year Settling Defendant shall provide in
14 accordance with the notice provisions of Paragraph 8 a copy of the most current version of the
15 programs administered pursuant to this paragraph. The copies provided shall be electronically red-
16 lined to specifically identify any additions or deletions made to each program as compared to the last
17 version of that program provided to the People.

18 **6.3 Certification of Document Retention:** Within 30 days of entry of the Final
19 Judgment by the Court, and annually thereafter for the duration of the Permanent Injunction, Settling
20 Defendant shall submit a certification that, to the best of Settling Defendant's knowledge and belief,
21 California governmental notices of violations and inspection reports (collectively "Inspections")
22 relating to the violations alleged in the Complaint that are received by a Covered Facility or the Store
23 Support Center of Home Depot, and any associated responsive correspondence ("Responses"), have
24 been retained by Settling Defendant. True and correct copies of such Inspections and Responses,
25 and all attachments thereto, shall be provided on a quarterly basis to the San Joaquin County District
26 Attorney's Office and to the California Attorney General's Office.

27 **6.4 Hazardous Waste Training:** Settling Defendant shall maintain and
28 administer a program to provide training to such employees in California as are required to be trained

1 in hazardous waste management procedures pursuant to California Health and Safety Code section
2 25123.3(h) and any other regulations applicable to the Covered Facilities, and shall maintain
3 documentation of such training as provided under that program for the duration of the Permanent
4 Injunction. Settling Defendant contends that as of the date of the entry of this Stipulation, the
5 Covered Facilities qualify as small quantity generators or conditionally exempt generators and that
6 at the time of the entry of this Stipulation training for large quantity generators is not required for
7 the Covered Facilities.

8 **6.5 Hazardous Materials Training:** Settling Defendant shall maintain and
9 administer a program to provide training to such employees in California as are required to be trained
10 in hazardous materials handling procedures pursuant to California Health and Safety Code section
11 25504 and all other training requirements pursuant to Chapter 6.95 and its implementing regulations
12 applicable at the Covered Facilities, and shall maintain documentation of such training as provided
13 under that program for the duration of the Permanent Injunction.

14 **6.6 Hazardous Waste Transport Containers:** Settling Defendant shall maintain
15 and administer a corporate policy that requires hazardous waste transporters that transport hazardous
16 waste from Covered Facilities for off-site disposal to use Department of Transportation-approved
17 containers, in accordance with Title 22 of the California Code of Regulations, section 66262.30.

18 **6.7 Fire Code Program:**

19 a. Except as provided in subdivision (c) of this Paragraph, prior to the
20 execution of the Stipulation for Entry of Final Judgment, Settling Defendant shall provide to the
21 People a proposed Fire Code Program that has been developed to comply with applicable Local,
22 State, and Uniform fire codes (hereinafter "the fire codes"). Settling Defendant shall adopt and begin
23 to administer this Fire Code Program at all Covered Facilities that are "Home Depot" branded retail
24 stores prior to the entry of the Final Judgment by the Court. At all Covered Facilities that are not
25 "Home Depot" branded retail stores, Settling Defendant shall deliver to each facility a
26 communication that requires each facility to comply with the fire codes prior to the entry of the Final
27 Judgment. Settling Defendant shall develop an enhanced version of the existing fire code procedures
28 (an "interim Fire Code Program") and adopt and begin to administer the interim Fire Code Program

1 at all Covered Facilities that are not "Home Depot" branded retail stores by September 15, 2007.
2 Settling Defendant then shall promptly review and evaluate compliance with the fire codes at all
3 Covered Facilities that are not "Home Depot" branded retail stores to identify whether any
4 modifications to the interim Fire Code Program may be necessary. Settling Defendant shall adopt
5 and begin to administer the revised Fire Code Program at all Covered Facilities that are not "Home
6 Depot" branded retail stores by January 15, 2008. As used in this paragraph, "equivalent program"
7 shall mean a program that achieves equivalent compliance with the fire codes in all material respects.

8 b. Settling Defendant shall initiate the process of applying for any
9 variances or opinions from the State Fire Marshal relating to the issues described in Exhibit H,
10 attached to the Final Judgment, within 60 days after entry of the Final Judgment and thereafter
11 promptly exhaust all administrative and/or legal remedies relating to such variances.

12 c. The People shall not pursue any violations of the Permanent Injunction
13 against Settling Defendant based on any alleged violation or penalty relating to the issues # 3, 7, and
14 8 identified in Exhibit H attached to the Final Judgment through and until October 15, 2007, and
15 issues # 1, 2, 4, 5, and 6 identified in Exhibit H attached to the Final Judgment through and until
16 November 30, 2007. However, this exclusion shall not apply to any release or incident involving
17 an imminent risk of death, serious bodily injury, explosion, or fire. Settling Defendant may provide
18 notice of the Final Judgment to any Certified Unified Program Agency ("CUPA") and local fire
19 department in California at the time of execution of the Stipulation to the Entry of Final Judgment
20 by the Parties, and may request that any agency provide comments or objections. If a local fire
21 department pursues any enforcement action relating to violations of the fire codes alleged to have
22 occurred prior to October 15, 2007 and November 30, 2007, as applicable, Settling Defendant may
23 notify the relevant agency of this Stipulation to the Entry of Final Judgment.

24 d. By January 15, 2008, Settling Defendant shall submit a certification
25 to the People that Settling Defendant has adopted and is administering a Fire Code Program in the
26 State of California at all Covered Facilities that are subject to the fire codes. For the duration of the
27 Permanent Injunction, Settling Defendant also shall annually submit a certification to the People that
28 Settling Defendant administered for the duration of the previous year the Fire Code Program in the

1 State of California at all Covered Facilities that are subject to the fire codes. As used in this
2 paragraph, "Fire Code Program" shall mean a program that achieves equivalent compliance with the
3 fire codes in all material respects. For the duration of the Permanent Injunction, at the close of each
4 quarter of each year Settling Defendant shall provide in accordance with the notice provisions of
5 Paragraph 8 a copy of the most current version of the programs administered pursuant to this
6 paragraph. The copies provided shall be electronically red-lined to specifically identify any additions
7 or deletions made to each program as compared to the last version of that program provided to the
8 People.

9 7. **MATTERS TO BE COVERED BY THE FINAL JUDGMENT**

10 7.1 This Stipulation and the entry of the Final Judgment shall be a final and
11 binding resolution and settlement of all Claims that have been alleged, or Claims that could have
12 been asserted within the scope of the allegations set forth, in the Complaint in this matter up until
13 execution of this Stipulation by the Parties, according to statute, regulation, or ordinance by or
14 through the People of the State of California ("Covered Matters"), against Settling Defendant and
15 its subsidiaries, affiliates and corporate parents, and each of their affiliates and parents, Covered
16 Facilities, successors, heirs, assigns, and their respective officers, directors, partners, employees,
17 agents, representatives, property owners, and facility operators ("Entities Covered by Settlement").
18 The People further covenant not to sue the Entities Covered by Settlement for any Covered Matter.
19 Except as expressly provided herein, each Party shall bear its own attorneys' fees and costs.

20 In the event that litigation is filed by an entity which is not a party to this
21 action against one of the Entities Covered by Settlement based upon Claims alleged in the
22 Complaint, or which could have been asserted based on the Claims alleged in the Complaint, Settling
23 Defendant shall notify the People within thirty (30) days of service of such litigation on Settling
24 Defendant. If the People determine that the subsequent litigation is barred by the principles in this
25 paragraph, the People will not oppose Settling Defendant in arguing that the subsequent litigation
26 is barred by the principle of *res judicata*. No language in this paragraph nor any language in
27 paragraph 6 will preclude Settling Defendant from asserting in any subsequent litigation any and all
28 legal and equitable defenses regarding compliance with any provision in the Final Judgment or the

1 laws or regulations cited in the Final Judgment or cited in the Complaint, including, but not limited
2 to, *res judicata*.

3 7.2 The provisions of Paragraph 7.1 are effective as of the date of the entry of the
4 Final Judgment but the continuing effect of such provisions is expressly conditioned on Settling
5 Defendant's full payment of the civil penalty, costs and other commitment of payments specified in
6 Paragraphs 5.1, 5.2, and 5.3 of the Final Judgment.

7 7.3 Paragraphs 7.1 and 7.2 have no effect on the ability of the People to enforce
8 the terms of the Final Judgment, or to pursue or file a separate or additional action for any
9 subsequent violation of statutory or regulatory requirements. The Parties intend that the Court
10 retains exclusive jurisdiction to address any future claims for injunctive relief, penalty assessment
11 or other relief for the Covered Facilities against Settling Defendant arising from or related to any
12 alleged or actual violations of the Final Judgment.

13 7.4 Any violations of law, statute, regulation or ordinance, if any, by Settling
14 Defendant which are not based on Claims alleged in the Complaint, or are not addressed as a
15 Covered Matter in the Final Judgment, or which occur or exist after entry of the Final Judgment is
16 fully executed, are not resolved, settled or covered by this Stipulation or the Final Judgment.

17 7.5 Settling Defendant covenants not to sue or pursue any civil or administrative
18 claims against the People or agencies of the State of California, or any counties of the State of
19 California, or any Fire department or agency, or any Certified Unified Program Agency, Participating
20 Agency or Unified Program Agency as those terms are defined pursuant to California Health and
21 Safety Code, section 25281, subdivisions (d)(1), (2) and (3) (collectively "Agencies"), or their
22 officers, employees, representatives, agents or attorneys, arising out of or related to any matter
23 expressly addressed by this Stipulation or the Final Judgment; provided, however, that if any
24 Agencies initiate claims against Settling Defendant, Settling Defendant reserves any and all rights
25 to pursue any and all rights, claims, demands and defenses against such Agencies.

26 7.6 Notwithstanding any other provision of the Final Judgment, any claims or
27 causes of action arising out of past or future releases, spills, leaks, discharges or disposal of

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1 hazardous wastes or hazardous substances caused or contributed to by Settling Defendant that may
2 have occurred or may occur at a location that is not a Covered Facility for:

- 3 a. performance of cleanup, corrective action or response action;
- 4 b. criminal penalties, civil penalties, damages, injunctive relief; or,
- 5 c. recovery of response costs,

6 are not resolved by the Final Judgment, and such claims or causes of action, if any, are reserved by
7 the People of the State of California; provided, however, that this exclusion does not apply to any
8 matter asserted against the Settling Defendant arising out of or relating to the handling, disposal
9 and/or transportation of hazardous materials and/or waste by EI, Slate, the 3E Company, Estes
10 Trucking Company ("Estes"), Exel, and any subsidiary, affiliate, or agent of these foregoing entities.
11 The Parties agree that nothing in this Paragraph 7.6 is intended to restrict or limit the scope of the
12 release for Covered Facilities as set forth in Paragraph 7.1.

13 7.7 Except as provided by the Final Judgment, the Parties reserve the right to
14 pursue any claims not related to Covered Matters and any defense to such claims ("Reserved
15 Claims").

16 7.8 In any subsequent action that may be brought by the People to enforce any
17 Reserved Claims or claims otherwise excluded from this settlement, Settling Defendant will not
18 assert, plead or raise against the People in any fashion any defense or avoidance claiming that such
19 failure to bring such claims as part of this action constitutes claim-splitting, laches or any other lack
20 of timeliness. This Paragraph does not affect any statute of limitations, if any, which may be
21 applicable to any Reserved Claims or claims otherwise excluded from this settlement.

22 7.9 Any event that is beyond the control of Settling Defendant and that prevents
23 Settling Defendant from timely performing any obligation under Section 6 of the Final Judgment,
24 despite Settling Defendant's best efforts to fulfill the obligation, is a "force majeure" event. The
25 requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes the
26 requirement that Settling Defendant use Settling Defendant's best efforts to anticipate any potential
27 force majeure event and use best efforts to address the effects of any potential force majeure event
28 (1) as it is occurring, and (2) following the force majeure event, such that the delay is minimized to

1 the greatest extent possible. "Force majeure" does not include Settling Defendant's financial
2 inability to fund or complete the obligation.

3 **8. NOTICE**

4 All submissions and notices required by the Final Judgment shall be sent to:

5 Plaintiff:

6 Brett J. Morris, Esq.
7 Deputy Attorney General
8 Office of the Attorney General
9 1515 Clay Street, 20th Floor
10 P.O. Box 70550
11 Oakland, CA 94162-0550
12 Brett.Morris@doj.ca.gov

13 and to:

14 David J. Irely, Esq.
15 Supervising Deputy District Attorney
16 San Joaquin County
17 San Joaquin County Courthouse
18 222 East Weber Avenue, Room 202
19 Stockton, CA 95202
20 david.irely@sjcda.org

21 Settling Defendant:

22 Celia J. Peressini, Esq.
23 Senior Corporate Counsel
24 The Home Depot U.S.A., Inc.
25 Store Support Center
26 2455 Paces Ferry Road, Bldg. C-20
27 Atlanta, GA 30339
28 Celia_Peressini@homedepot.com

and to:

Debra S. Belaga, Esq.
O'Melveny & Myers LLP
275 Battery Street
San Francisco, CA 94111
dbelaga@omm.com

Any Party may change the contact person or the address for purpose of notices to that Party by specifying a new contact person or address in a notice delivered in writing to the person to whom notice shall be provided under this Paragraph. All notices and other communications required or permitted under the Final Judgment that are addressed as provided in this Paragraph are effective (i) upon delivery if delivered personally or by overnight mail; (ii) five (5) days following deposit in the

1 United States mail, postage prepaid, if delivered by mail; or, (iii) the day that electronic mail is sent
2 if sent before 5 p.m. to the electronic mail addresses of the designated recipients for notice
3 concurrent with sending the notice by overnight mail.

4 **9. NECESSITY FOR WRITTEN APPROVALS**

5 All approvals and decisions of the People regarding any matter requiring approval or decision
6 of the People under the terms of this Stipulation shall be communicated in writing to Settling
7 Defendant. No informal oral advice, guidance, suggestions, or comments by employees or officials
8 of the People regarding submissions or notices shall be construed to relieve Settling Defendant of
9 its obligations under the Final Judgment. All approvals and decisions of Settling Defendant
10 regarding any matter requiring approval or decision of Settling Defendant which are required to be
11 communicated to the People under the terms of the Final Judgment shall be communicated in writing
12 to the People.

13 **10. EFFECT OF FINAL JUDGMENT**

14 Except as expressly provided in the Final Judgment, nothing in this Stipulation is intended
15 nor shall it be construed to preclude the People or any state agency, department, board or entity, or
16 any county, or any Certified Unified Program Agency, Participating Agency, Unified Program
17 Agency or any other local agency from exercising its authority under any law, statute, or regulation
18 at the Covered Facilities or any other facility addressed or identified in the Final Judgment. Except
19 as expressly provided in the Final Judgment, Settling Defendant retains all of its defenses to the
20 exercise of the authority by any of the aforementioned agencies or entities.

21 **11. PLAINTIFF IS NOT LIABLE**

22 The Plaintiff shall not be liable for any injury or damage to persons or property resulting from
23 acts or omissions by Settling Defendant, its directors, officers, employees, agents, representatives
24 or contractors in carrying out activities pursuant to the Final Judgment, nor shall the Plaintiff be held
25 as a party to or guarantor of any contract entered into by Settling Defendant, its directors, officers,
26 employees, agents, representatives, or contractors in carrying out activities required pursuant to the
27 Final Judgment.

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1 **12. NO WAIVER OF RIGHT TO ENFORCE**

2 The failure of the People to enforce any provision of the Final Judgment shall neither be
3 deemed a waiver of such provision nor in any way affect the validity of the Final Judgment. The
4 failure of the People to enforce any such provision shall not preclude it from later enforcing the same
5 or any other provision of the Final Judgment. No oral advice, guidance, suggestions, or comments
6 by employees or officials of any Party regarding matters covered in the Final Judgment shall be
7 construed to relieve any Party of its obligations required by the Final Judgment.

8 **13. REGULATORY CHANGES**

9 Nothing in the Final Judgment shall excuse Settling Defendant from meeting any more
10 stringent requirements which may be imposed hereafter by changes in applicable and legally binding
11 legislation or regulations.

12 **14. APPLICATION OF FINAL JUDGMENT**

13 The Final Judgment shall apply to and be binding upon Plaintiff, Settling Defendant, and the
14 successors or assigns of each of them; provided, however, that Paragraph 6 shall not apply to a
15 Covered Facility that is sold or otherwise transferred to a person or entity that is not associated with
16 Settling Defendant.

17 **15. AUTHORITY TO ENTER STIPULATION**

18 Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he
19 or she represents to enter into this Stipulation, to execute it on behalf of the Party represented, and
20 to legally bind that Party.

21 **16. CONTINUING JURISDICTION**

22 **16.1** The Court shall retain continuing jurisdiction to enforce the terms of the Final
23 Judgment and to address any other matters arising out of or regarding the Final Judgment. The
24 People may move the Court to enjoin Settling Defendant from any violation of any provision of the
25 Final Judgment. The Parties shall meet and confer prior to the filing of any motion relating to the
26 Final Judgment, any dispute regarding Settling Defendant's compliance with any requirement of the
27 Permanent Injunction, or any dispute regarding Settling Defendant's administration of the HHM III
28 or Fire Code Programs, and the Parties shall negotiate in good faith in an effort to resolve any dispute

1 without judicial intervention. If the Parties are unable to resolve a dispute during meet and confer
2 discussions, either Party may move the Court seeking a resolution of that dispute by the Court. Any
3 Party may invite any interested third party state or local governmental entity or agency to participate
4 in any meet and confer discussion, and with the Court's consent, to participate in any court
5 proceeding under this paragraph. Settling Defendant reserves its right to set forth any defenses to
6 alleged violations, and the People reserves its rights to respond to any alleged defenses, before the
7 Court.

8 16.2 At any time fifty-eight (58) months after the date of entry of the Final
9 Judgment by the Court, any Party may provide notice to the Court (which shall be served on all
10 Parties) that the Permanent Injunction provisions of Paragraph 6 of the Final Judgment should expire
11 and have no further force or effect ("Notice of Termination"). The Permanent Injunction provisions
12 of Paragraph 6 will be of no further force or effect sixty (60) days thereafter, unless the People file
13 a motion contesting the expiration of the Permanent Injunction provisions of Paragraph 6 within
14 forty (40) days of receipt of the Notice of Termination. With the Court's consent, this motion filed
15 by the People shall be set for hearing no later than sixty months (60) months after entry of the Final
16 Judgment by the Court. In any event that such a motion is filed, none of the contested injunctive
17 provisions of Paragraph 6 will terminate pending the Court's ruling on the motion. The People
18 reserves its rights to contest termination exclusively on the grounds that Settling Defendant has not
19 substantially complied in material respects with the injunctive provisions of Paragraph 6 or has not
20 been reasonably diligent in administering a HHM III Program or a Fire Code Program, and to offer
21 any evidence relevant to such motion. Settling Defendant reserves its rights to respond on any
22 ground raised in this motion and to offer any evidence relevant to such contesting motion filed by
23 the People. The provisions of the Permanent Injunction in Paragraph 6 will expire and be of no
24 further force or effect unless the Court (upon consideration of the Parties' pleadings and arguments,
25 if any) determines that the expiration of the provisions would not be in the interest of justice, because
26 the Settling Defendant has not substantially complied in material respects with the injunctive
27 provisions of Paragraph 6 or has not been reasonably diligent in administering a HHM III Program
28 or a Fire Code Program. The termination of any of the Permanent Injunction provisions of Paragraph

1 6 shall have no effect on Settling Defendant's obligation to comply with requirements imposed by
2 statute, regulation, ordinance, or law.

3 **17. NON-DISCHARGEABILITY OF OBLIGATIONS**

4 Any payments required by Settling Defendant pursuant to the Final Judgment are not
5 dischargeable in bankruptcy.

6 **18. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

7 On reasonable notice and subject to all of the defenses Settling Defendant would have to
8 requests for documents made by subpoena or other formal legal process or discovery employed by
9 the People, the following duly authorized representative of the undersigned offices shall be permitted
10 to inspect and copy such records and documents in the possession of Settling Defendant as may be
11 reasonably necessary to determine whether Settling Defendant is in compliance with the terms of the
12 Final Judgment: David J. Irely of the San Joaquin County District Attorney's Office, and Brett J.
13 Morris of the California Attorney General's Office. Nothing in this paragraph is intended to require
14 access to or production of any documents which are protected from production by the attorney-client
15 privilege, attorney work product doctrine, or any other applicable privileges, defenses, exemptions,
16 or immunities afforded to Settling Defendant under law. Settling Defendant shall retain for a
17 minimum of three (3) years the following documents, regardless of whether Settling Defendant or
18 a contractor prepares the document: manifests, shipping documents, inspections forms, sweep logs,
19 and records of attendance pertaining to training, as required by the procedures of HHM III.
20 However, the Parties agree that Settling Defendant may not be deemed in violation of this Paragraph
21 18 for failure to maintain such records unless Settling Defendant fails to exercise reasonable
22 diligence in administering this record retention requirement. Except as described in this paragraph
23 and in Paragraph 6, nothing in this paragraph is intended to require Settling Defendant to keep any
24 records beyond the Settling Defendant's normal records retention requirements, including but not
25 limited to policies regarding backup tapes for electronic documents.

26 **19. CERTIFICATION**

27 Whenever the Final Judgment requires the certification by the Settling Defendant, such
28 certification shall be provided by a Settling Defendant representative at a managerial level in charge

1 of environmental compliance matters, or by an officer of the corporation. Each certification shall
2 read as follows:

3 To the best of my knowledge, based on information and belief and after reasonable
4 investigation, I certify that the information contained in or accompanying this
5 submission is true, accurate, and complete. I am aware that there are civil and
6 criminal penalties for submitting false information.

6 **20. ENFORCEMENT OF FINAL JUDGMENT**

7 In the event that a Party brings an action to enforce any of the terms of the Final Judgment,
8 the prevailing Party shall be entitled to its reasonable costs, including attorney's fees and costs,
9 including any costs for expert witnesses or other costs.

10 **21. PAYMENT OF LITIGATION EXPENSES AND FEES**

11 Settling Defendant shall pay its own attorney's fees, expert witness fees and costs, and all
12 other costs of litigation and investigation incurred to date.

13 **22. INTERPRETATION**

14 This Stipulation and the Final Judgment shall be deemed to have been drafted equally by all
15 Parties hereto. Accordingly, the Parties hereby agree that any and all rules of construction to the
16 effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute
17 concerning the terms, meaning, or interpretation of the Final Judgment.

18 **23. COUNTERPART SIGNATURES**

19 This Stipulation may be executed by the Parties in counterparts, and when a copy is signed
20 by an authorized representative of each Party, the counterparts of the Stipulation shall be effective
21 as if a single document were signed by all Parties.

22 **24. COOPERATION BY SETTLING DEFENDANT**

23 It is the intention of Settling Defendant to cooperate with the People in addressing potential
24 violations of environmental laws by EI, Slate, the 3E Company, Estes, Exel, and any subsidiary,
25 affiliate, or agent of these foregoing entities. Settling Defendant agrees that, at the People's
26 reasonable request and upon reasonable notice, Settling Defendant will provide documents in
27 Settling Defendant's possession or control to the People for use as evidence in potential legal actions
28 against EI, Slate, the 3E Company, Estes, Exel, and any subsidiary, affiliate, or agent of these

1 foregoing entities; provided, however, that this obligation shall terminate no later than two years
2 after the date of entry of the Final Judgment and shall not require Settling Defendant to alter its
3 normal retention policies (including but not limited to policies regarding backup tapes for electronic
4 documents). Nothing in this paragraph is intended to require access to or production of any
5 documents which are protected from disclosure by the attorney-client privilege, attorney work
6 product doctrine, or any other applicable privileges, defenses, exemptions, or immunities afforded
7 to Settling Defendant under law, nor does it waive any of the objections or defenses to which Settling
8 Defendant would be entitled in responding to requests for documents made by subpoena or other
9 formal legal process or discovery.

10 **25. INCORPORATION OF EXHIBITS**

11 Each of the Exhibits is incorporated herein by reference.

12 **26. ENTRY AFTER NOTICED MOTION**

13 This Stipulation for Entry of Final Judgment shall be brought before the Court for approval
14 on noticed motion and the Court shall be requested to make a fairness determination in order to
15 ensure that the Final Judgment is fair and in the public interest. By entering this Stipulation, the
16 Parties represent to the Court that the Entry of the Final Judgment results in a full, fair, and final
17 resolution of the Claims which were or could have been raised in the Complaint based on the Claims
18 alleged therein. Settling Defendant has indicated that it may provide written notice of the proposed
19 settlement to state, county, municipal, and local officials with authority to bring any claims which
20 are designated in Paragraph 7.1 as matters covered by the Final Judgment. Settling Defendant
21 represents that if such notice is provided it will include a complete copy of the Final Judgment, the
22 moving papers in support of the motion for entry of the Final Judgment, and will specifically recite
23 the terms of Paragraph 7.1.

24 **27. INTEGRATION**

25 This Stipulation constitutes the entire agreement between the Parties and may not be
26 amended or supplemented except as provided for in the Final Judgment.

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1 **28. MODIFICATION OF FINAL JUDGMENT**

2 The Final Judgment may be modified only upon written consent by the Parties hereto and the
3 approval of the court as provided for by law.

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5 **IT IS SO STIPULATED.**

6 **FOR THE PLAINTIFF:**

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9 Dated: August 13, 2007

EDMUND G. BROWN JR., Attorney General
of the State of California
TOM GREENE
Chief Assistant Attorney General
THEODORA P. BERGER
Senior Assistant Attorney General
KEN ALEX
Supervising Deputy Attorney General

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Original signed by Brett J. Morris

BRETT J. MORRIS
Deputy Attorney General
Attorneys for Plaintiff
People of the State of California

Dated: August 13, 2007

ROCKARD J. DELGADILLO, City Attorney
of the City of Los Angeles

Original signed by Rockard J. Delgadillo

ROCKARD J. DELGADILLO, City Attorney
of the City of Los Angeles

1
2 Dated: August 13, 2007

STEVE COOLEY, District Attorney
of the County of Los Angeles
STANLEY P. WILLIAMS
Assistant Head Deputy District Attorney
DANIEL J. WRIGHT
Deputy District Attorney

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7 Original signed by Daniel J. Wright

8 DANIEL J. WRIGHT
9 Deputy District Attorney

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12 Dated: August 13, 2007

DEAN D. FLIPPO, District Attorney
of the County of Monterey
MATT BOGOSHIAN
Deputy District Attorney

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17 Original signed by Matt Bogoshian

18 MATT BOGOSHIAN
19 Deputy District Attorney

20
21 Dated: August 13, 2007

ROD PACHECO, District Attorney
of the County of Riverside
DEENA M. BENNETT
Supervising Deputy District Attorney
STEPHANIE B. WEISSMAN
Deputy District Attorney

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26 Original signed by Stephanie B. Weissman

27 STEPHANIE B. WEISSMAN
28 Deputy District Attorney

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Dated: August 13, 2007

JAMES P. WILLETT, District Attorney
of the County of San Joaquin
DAVID J. IREY
Supervising Deputy District Attorney

Original signed by David J. Irey

DAVID J. IREY
Supervising Deputy District Attorney

Dated: August 13, 2007

DOLORES A. CARR, District Attorney
of the County of Santa Clara
JOHN FIORETTA
Deputy District Attorney

Original signed by John Fioretta

JOHN FIORETTA
Deputy District Attorney

FOR THE SETTLING DEFENDANT:

Dated: August 14, 2007

Original signed by George Sherman

GEORGE SHERMAN
Senior Vice President - Operations
The Home Depot U.S.A., Inc.

Approved as to Form:

Dated: August 13, 2007

O'MELVENY & MYERS, LLP
By:

Original signed by James R. Asperger

JAMES R. ASPERGER
Attorneys for Defendant
The Home Depot U.S.A., Inc.